IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 13, 2006 Session

JIM BESON, ET AL. v. THE GUARDIAN WARRANTY CORPORATION

Appeal from the Circuit Court for Lincoln County
No. C0500133 F. Lee Russell, Judge

No. M2005-02538-COA-R3-CV - Filed on March 28, 2007

A company that sells warranties on used cars appeals trial court's judgment finding that truck repairs are covered by its warranty, alleging *inter alia* that the owner suffered no injury and the warranty excluded these particular repairs. We hold that the damaged engine parts were "covered components," the damage was not caused by the failure of a non-covered component, and the warranty company's denial of coverage did not relieve it of liability. Accordingly, we affirm the trial court and remand for specific modifications in the judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed in Part and Remanded

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

Christopher V. Sockwell, Ryan P. Durham, Lawrence, Tennessee, for the appellant, The Guardian Warranty Corporation.

Johnny D. Hill, Jr., Fayetteville, Tennessee, for the appellees, Jim Beson and Dwayne Pierce and Darlene Pierce d/b/a R & D Truck Sales.

MEMORANDUM OPINION[1]

Dwayne and Darlene Pierce (the "Pierces") owned and operated R&D Truck Sales in Fayetteville, Tennessee. As part of their business, in 2004 the Pierces bought a 2001 Chevrolet

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[1] Tenn. R. Ct. App. 10 states:

> This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

Silverado 3500 diesel truck with 117,554 miles ("the Truck") at an auction in Birmingham, Alabama.

The Guardian Warranty Corporation ("Guardian") sells warranties to purchasers of used vehicles. The Pierces had a contract with Guardian to offer the Pierces' customers warranties on used vehicles sold by the Pierces. As part of the contract, the Pierces were to inspect and repair any vehicles if the prospective purchasers were applying for a Guardian warranty. The Pierces received a percentage commission for every Guardian warranty they sold. After the sale of the warranty, the Pierces had no further role in the relationship between Guardian and the vehicle owners who had purchased a warranty from Guardian.

In September of 2004, the Pierces sold the Truck to Mr. Jim Beson for $15,000. Mr. Beson elected also to purchase a warranty from Guardian for $875. The warranty contract between Mr. Beson and Guardian required Guardian to repair, replace or reimburse Mr. Beson for "covered components" damaged as a result of mechanical breakdown[2] subject to a $100 deductible. Under the terms of the agreement, Mr. Beson is responsible for all expenses associated with diagnosis of the truck's condition. Thereafter, only repairs authorized by Guardian would be covered.

Shortly after buying the truck, Mr. Beson reported to the Pierces that the Truck was leaking oil.[3] At this point, Mr. Beson had driven the Truck about 1,084 miles. Mr. Pierce gave Mr. Beson a loaner and took the Truck to a Chevrolet dealership. Mr. Pierce gave the dealership permission to disassemble the Truck to diagnose the problem. He was told by the dealership that a cracked head had damaged the cylinder block causing it to crack as well.

After the dealership determined that the problem was a cracked cylinder block, Mr. Pierce testified that he contacted Guardian about the Truck problems. The Truck's owner, Mr. Beson, had no contact with Guardian. Early on, a Guardian representative told Mr. Pierce that the repairs would be covered by the warranty. Later, Guardian refused to approve the repairs since the defects requiring the repair were excluded by the warranty. Mr. Pierce testified that the Guardian representative told him Guardian would not cover it since "they never paid a claim that big and had no intentions of paying a claim that big." After Guardian declined coverage, Mr. Pierce ordered the repair work to be done and testified that he decided to pay for the repairs himself because "it was the right thing to do." The repair bill totaled $13,145.72.

The Pierces and Mr. Beson sued Guardian in General Sessions Court to recover under the warranty. The General Sessions Court entered a judgment for the plaintiffs. Guardian appealed to the Circuit Court. After a one day bench trial, on September 28, 2005, without further findings the circuit court held that "Plaintiff, Jim Beson, is entitled to a judgment against [Guardian] in the

[2] "Mechanical Breakdown" is defined in the warranty contract to mean "the inability of any covered component to perform the function for which it is designed due to defects in material or workmanship."

[3] All parties agree that this oil leak is not covered by the warranty. Apparently, the oil leak triggered a more thorough inspection of the Truck that brought other problems to light.

amount of $13,045.72 in compensatory damages plus $1,195.86 in prejudgment interest for a total judgment of $14,241.58."

Guardian appeals on four grounds. First, Guardian claims that since Mr. Pierce paid the bill, the insured, Mr. Beson, suffered no injury. Second, Guardian claims the mechanical problem with the Truck is excluded under its warranty. Third, Guardian claims failure to obtain its approval prior to making the repair is a violation of the warranty and grounds to deny coverage. Fourth, Guardian claims that even if it is liable, the trial court erred by failing to deduct the cost of diagnosis from the judgment.

I. STANDARD OF REVIEW

We review this case *de novo* on the record with a presumption of correctness of the trial court's findings of fact, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Blair v. Brownson*, 197 S.W.3d 681, 684 (Tenn. 2006). No presumption of correctness attaches to the trial court's decisions regarding questions of law, and we review those *de novo*. *Whaley v Perkins*, 197 S.W.3d 665, 670 (Tenn. 2006).

The question of interpretation of a contract is a question of law. *Guiliano v. Cleo, Inc*, 995 S.W.2d 88, 95 (Tenn. 1999). Therefore, the trial court's interpretation of a contractual document is not entitled to a presumption of correctness on appeal. *Id.*; *Angus v. Western Heritage Ins. Co.*, 48 S.W.3d 728, 730 (Tenn. Ct. App. 2000). This court must review the document ourselves and make our own determination regarding its meaning and legal import. *Hillsboro Plaza Enters. v. Moon*, 860 S.W.2d 45, 47 (Tenn. Ct. App. 1993).

Our review is governed by well-settled principles. "The central tenet of contract construction is that the intent of the contracting parties at the time of executing the agreement should govern." *Planters Gin Co. v. Fed. Compress & Warehouse Co., Inc.*, 78 S.W.3d 885, 890 (Tenn. 2002). The court's role in resolving disputes regarding the interpretation of a contract is to ascertain the intention of the parties based upon the usual, natural, and ordinary meaning of the language used. *Guiliano*, 995 S.W.2d at 95; *Bob Pearsall Motors, Inc. v. Regal Chrysler-Plymouth Inc.*, 521 S.W.2d 578, 580 (Tenn. 1975).

II. AWARD TO MR. BESON

Guardian first argues that since Mr. Pierce paid the repair bill, then Mr. Beson suffered no injury and was, therefore, not entitled to an award of damages.

The trial court heard testimony from Mr. Beson that he had an informal agreement with the Pierces that if they would "front" the money to make the repairs then Mr. Beson would cooperate in any legal claim against Guardian and reimburse Mr. Pierce from the recovery of his cost of repair. Both Mr. Beson and Mr. Pierce were parties to the suit. It is clear that Mr. Beson and Mr. Pierce

proceeded together on this claim. While the agreement between the parties was informal, neither one disputed at trial what was essentially an assignment of Mr. Beson's claim.

Based on the testimony before the trial court, we find the agreement between Mr. Pierce and Mr. Beson is no obstacle to recovery. However, given the testimony about the agreement, any award should be made to Mr. Pierce and not Mr. Beson. Therefore, we remand to the trial court to revise the judgment making the award to Mr. Pierce.

III. WARRANTY COVERAGE

Guardian argues on appeal that the defects in Mr. Beson's Truck that required repairs were not included in the warranty. All parties agree that it was damage to the cylinder head and cylinder block of the Truck that required repair. All parties also agree that the warranty expressly included both the cylinder head and block as "Covered Components." According to the Pierces and Mr. Beson, our inquiry stops here and Guardian is responsible for the cost of repair.

Guardian, however, maintains that since a fluid leak caused the cylinder head and block damage then it is excluded by the warranty. Guardian relies upon specific exclusions in the warranty. The relevant portion of the warranty agreement states:

> What is not covered: The following are not covered by this Contract:
>
> . . .
>
> b. Repairs to Covered Components caused by the failure of a non-Covered Component.
>
> c. Greases, lubricants, refrigerants, and sales tax, fluid leaks.

The only witness who testified about the problems with the truck was Brett Bassham who was the service manager at the dealership that repaired the Truck. Mr. Bassham testified that when they disassembled the engine they found an internal coolant leak had allowed coolant to enter through the heads into the cylinders of the Truck. According to Mr. Bassham, due to the heat inside the cylinders, the coolant leak changed the temperature causing the cylinder heads and block to crack. Consequently, the coolant leak caused the damage to the cylinder heads and block requiring the repair. The trial court heard no other testimony on the cause of the damage.

Based on the only testimony offered, we must conclude that damage to the covered components, the cylinder heads and block, was caused by a fluid leak. However, we do not believe that a fluid leak is a "non-Covered Component." The warranty contract was prepared by Guardian, so any ambiguity will be construed against them. *Vantage Technology, LLC v. Cross*, 17 S.W.3d 636, 650 (Tenn. Ct. App. 1999). The warranty contract does not define "non-Covered Components." The contract simply states that if it is not included in the covered components then the item is not covered.

Examining the warranty contract and the list of items identified as "Covered Components," it is clear that "components" means parts of the vehicle itself. A fluid leak is not a part; neither is it a component. A leak is an event. Further, the exclusion applies to a failure of a non-covered component. A fluid leak cannot have a failure. In other words, under the exception language, even if a leak were a component, the damage would have to be caused by "the failure of" a fluid leak.

Consequently, since the cylinder heads and block were covered, we find the warranty contract covered the repairs at issue.

IV. Lack of Prior Authorization

Next, Guardian relies on an exclusion in the policy that excludes "repairs without our prior authorization and issuance of a Claim Authorization." The proof showed that Guardian was apprised of the problem after the engine was disassembled and the damages identified and denied coverage. We do not believe the exclusion for non-authorized repairs was meant to continue to apply after Guardian denied coverage. Under Guardian's interpretation, if Guardian denied coverage, then a vehicle could not be repaired until the litigation over coverage was complete. Such an interpretation goes beyond the purpose of the provision and common sense. The provision allows Guardian to have appropriate control over repair costs for claims it honors. Here, Guardian elected to deny coverage. We do not find that proceeding to repair the Truck after Guardian denied coverage bars coverage.

V. Expense of Diagnosis

Finally, Guardian argues that even if it is liable on the warranty, the warranty clearly excludes costs of diagnosis. According to Guardian, the trial court erred when it included such expenses in its award. The Pierces do not deny that costs of diagnosis are excluded under the warranty. Rather, they respond that Guardian raised this issue for the first time on appeal.

The Pierces and Mr. Beson, as the plaintiffs, had the burden of establishing their damages, *i.e.*, the cost of repairs covered by the warranty. In cross-examination of Mr. Bassham, Guardian's attorney elicited testimony regarding the amount of labor involved in breaking down the engine so as to diagnose the problems needing repair. Consequently, Guardian sufficiently raised the issue of non-coverage for diagnostic costs. The case is remanded to the trial court to offset the judgment by the expense incurred in diagnosing the problem with the Truck as clearly required by the warranty agreement.

VI. Conclusion

The trial court is affirmed, and the case is remanded to revise the judgment in favor of Mr. Beson and to reduce the judgment by the amount expended to diagnosis the problems with the Truck. Costs of this appeal are taxed to the Guardian Warranty Corporation.

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PATRICIA J. COTTRELL, JUDGE